IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Subodh Verma V/S Miss Surender K. Saluja

S.B. Civil First Appeal No.293/97 against the judgment and decree dated 17.05.1997 passed by Shri N.D.Bilochi Addl. District Judge No.6, Jaipur City, Jaipur in Civil Suit No. 31/94.

Date of Judgment ::: October 10, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. Anil Sharma for the appellant
Mr. O.P. Mishra for the respondent

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 17.5.1997 passed by the learned Additional District Judge No.6, Jaipur City, Jaipur whereby the learned Judge has decreed the plaintiff's suit.

Plaintiff respondent filed a suit for dissolution of partnership and rendition of accounts. The trial court passed a preliminary decree to the effect that dissolution of partnership firm among the parties shall

be treated to be from 12.5.194 i.e. the date on which suit was filed and the plaintiff shall be entitled to get the accounts of partnership frim from the defendants and after the accounts are rendered, it would be determined as to what extent the plaintiff is entitled to receive the amount and the interest.

The only argument advanced by the defendant appellant is that the defendants have specifically pleaded that firm had already dissolved on 18.9.1993 and a notice to this effect was also served on the plaintiff. Therefore, according to the learned counsel, the partnership firm should be deemed to have dissolved on 18.9.1993.

I have considered the above argument and gone through the impugned judgment and the evidence on record. Having gone through the evidence it appears that notice as averred by the defendants was not served on the plaintiff. Defendant appellant Subodh Verma in his statement has deposed that notice Ex.D.1/1 about dissolution of firm on 18.3.1993 was sent to the plaintiff. However, in cross examination, the defendant stated that the notice was not received by the plaintiff and it returned back. The trial court while

relying on Asharam Vs. Ram Chandra & others (19993(1) WLN 388) and Mangilal Vs. Ghisu Khan and others (1979 WLN 194) has come to a conclusion that where a firm is being dissolved by way of notice, the dissolution of firm shall be deemed to have taken place only after the notice is received. Clause (1) of Section 43 of the Partnership Act. 1932 provides that where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm. Sub Clause (2) provides that the firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice. In the case at hand, no date of dissolution of firm was communicated to the plaintiff. In this view of the matter, the trial court has rightly concluded that since notice was not served on the plaintiff and therefore, it cannot be said that the firm had dissolved on 18.9.1993. The trial court while exercising powers under Section 44 of the Partnership Act has dissolved the firm from the date of filing of suit and in my view, rightly so.

Resultantly, the appeal is dismissed as being

devoid of merit, with no order as to costs.

(Khem Chand Sharma), J.

nlthanvi/
PS